THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT PETITION NO : 23880 of 1999

DATED:24/08/2005

Between:

S.Chandrapaul, S/o late S.Butchaiah,
E.No.103968 R/o 6-1-507/C/205,Mahabharat Nagar,
Indiranagar Colony, Khairatabad, Hyderabad.

..... PETITIONER

AND

1 The Hon'ble Industrial Tribunal-II, Rep. by its Presiding Officer,
Chandavihar Building, 2nd Floor,
M.J.Road, Hyderabad
2 The Depot Manager, A.P. State Road Transport Corporation,
Kukatpally Depot, Hyderabad.

.....RESPONDENT(S)

THE HONOURABLE SRI JUSTICER C.V.RAMULU

W.P.NO. 23880 OF 1999

ORDER:

This writ petition is filed by the workman being aggrieved by the Award made in I.D.No.87 of 1998 (old I.D.No.119 of 97) dated 3-11-1998 on the file of the Industrial Tribunal-II, Hyderabad, in so far as not granting the relief of continuity of service, back wages and other attendant benefits.

It is the case of the workman that he was joined the service of APSRTC as driver in the year 1984 and he has put in good track record of service. However, unfortunately when he was driving the bus No.AEZ 3365 on the route No.9 on 4-3-1992 an accident occurred in which a woman pedestrian was injured and thereafter died in the hospital. In view of the same, he was issued with a charge sheet stating

that he drove the bus in a highly negligent and careless manner and caused injuries to a pedestrian. The petitioner submitted a detailed explanation. However, the same was not considered and a detailed enquiry was ordered into the matter. The Enquiry Officer submitted a report holding him guilty of the charges. On the basis of the Enquiry officer's report, the disciplinary authority passed an order of removal dated 31-7-1992. Aggrieved by the same the petitioner filed an appeal before the Divisional Manger, Sanathnagar Division. The appellate authority after considering the entire case elaborately, directed fresh appointment of the workman by passing the following order.

" On perusal of the sketch and the statement of the witness lady passengers, it is abundantly clear that out of 3 lady passengers, two have already crossed and the 3rd while attempting to cross from driver's side rear wheel got stuck in the process of crossing. The feet of the injured passenger got crushed between the edge of the platform and the rear wheel tyres. As pointed out by the driver, strengthen by the supervisor during the enquiry, the service driver should concentrate while taking out the bus from bus bay on the left side vision mirror to keep track of boarding and alighting passengers. In the instant case, the pedestrian seem to have not taken reasonable precaution while crossing the bus bay. The accident occurred between the edge of the platform and the rear wheel of the bus. Hence, the entire responsibility cannot be passed on to the driver. This is vindicative by the original submission of Superintendent (T) to the Depot Manager/JDM when he has clearly stated that the driver is partially responsible. Also on a perusal of his service record, it is observed that he has appointed on 14-12-1984 and since then he has put in clean and tidy record for the past 8 years. No fatal accident was ever caused by him during the last 8 years as already submitted by the delinquent. Hence, he cannot be treated as an accident prone driver.

For the reasons cited above, I am inclined to take a lenient view, set aside the order given by the DM/JDM and passed the orders as follows:

i)Re-instate him into service and post him to Kukatpally Depot.

ii)Reduce his seniority to such an extent treating him appointed afresh and reckoning the same from the date of his joining at Kukatpally Depot.

iii)His pay be fixed at the minimum of the scale of Driver Gr.II.

iv)He may be directed for medical examination to know his fitness for the post of Dr.Gr.II."

Further the workman approached the conciliation authority seeking further relief of reinstatement, continuity of service, back wages etc. On failure of conciliation proceedings, the matter was referred to the Government and in turn the Government referred the matter to the Industrial Tribunal-II, Hyderabad for adjudication of the following issues.

"Whether the Divisional Manager is justified in imposing a punishment of appointment of Mr.S.Chandrapaul, Driver afresh in Grade-II on the minimum basic salary?

If not, to what relief Mr.S.Chandrapaul, Driver is entitled?"

Before the Labour Court, though no oral evidence was adduced on behalf of the respondent-management, documents Exs.M.1 to M.17 were marked. However, no documentary evidence was marked on behalf of the workman. After elaborate consideration, the Labour Court came to the conclusion that the workman failed to take necessary precautions at the bus terminus which resulted in the accident. The accident occurred due to negligent driving and lack of anticipation on his part while taking right turn in between bus bays in a busy road. However, the punishment imposed by the Depot Manager ie., removal from service was set-aside and the appellate authority ordered reinstatement into the service as fresh recruit driver and the petitioner does not deserve any further indulgence to be shown and the same was dismissed. The Award passed by the Labour Court is contrary to the principles of natural justice and discretionary power vested with the Labour Court under

Section 11 (A) of the Industrial Disputes Act and the Award is liable to be set-aside.

A detailed counter affidavit has been filed on behalf of the respondents denying the allegations made by the workman. It is asserted that the relief granted by the appellate authority itself was a concession and in fact, a lenient view was taken by the appellate authority, otherwise, the charges which are grave in nature against the workman were proved in full and he does not deserve any further relief to be granted such as continuity of service, back wages and other attendant benefits.The Award passed by the Labour Court is just and proper and does not call for interference of this Court.

I have given my earnest consideration to the respective submissions made by the learned counsel on either side and also perused the Award passed by the Labour Court and other material made available on record.

At the out set, I am of the opinion that the Labour Court has not committed any error in coming to the conclusion that the findings reached by the Enquiry Officer as confirmed by the appellate authority are just and proper. However, the Labour Court could have taken a lenient view of the matter in view of the very findings of the appellate authority as noticed above. The appellate authority has categorically found that in the instant case, the pedestrian seems to have not taken reasonable precaution while crossing the bus bay. The accident occurred between the edge of the platform and rare wheel of the bus. Therefore, the entire responsibility cannot be passed on to the driver and this is indicative from the original statement of Superintendent (T) to the Depot Manager, Jeedimatla Depot,

wherein it is clearly stated that the driver is partially responsible . Further on perusal of the service record of the workman, it was observed that he was appointed on 14-12-1984 and he had a clean and tidy record for about eight years. No fatal accident was ever caused by him during the past eight years. Once this is so, the Labour Court ought to have taken into consideration the observations of the appellate authority and granted some more relief to the workman. The Labour Court has grossly erred in not properly exercising its power vested under Section 11 (A) of the Industrial Disputes Act.Therefore, the Award passed by the Labour Court is liable to be set-aside and accordingly set-aside.

In the result, the writ petition is allowed and it is declared that the respondent-workman is not only entitled for reinstatement into service but is also entitled for continuity of service for all purposes. However, he is not entitled for back wages and other attendant benefits as claimed.

The writ petition is allowed to the extent indicated above. No order as to costs.

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C.V.RAMULU,J

24-08-2005

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